

United States Senate

WASHINGTON, DC 20510-2503

April 22, 2004

Thomas H. Kean
Chair
Lee H. Hamilton
Vice Chair
National Commission on Terrorist Attacks
Upon the United States
301 7th St., SW
Washington, DC 20407

Dear Chairman Kean and Vice-Chairman Hamilton:

Among the purposes of the National Commission on Terrorist Attacks Upon the United States (Commission) is to deliver to the American people a full and complete accounting on the extent of our preparedness for the attacks. A stated function of the Commission is to investigate any relevant plan, policy or practice relating to intelligence and law enforcement agencies and identify, review and evaluate the lessons learned from the attacks regarding the structure of the federal government. To complete this mandate, it is imperative that Commissioner and former Deputy Attorney General, Jamie Gorelick, testify before the Commission on her work while at the Department of Justice and her knowledge on the issue of policies on the relationship between intelligence and law enforcement agencies.

In testimony before the United States Senate Committee on Intelligence, on October 25, 1995, then Deputy Attorney General Gorelick testified on the challenges facing the relationship between law enforcement and intelligence gathering functions of the federal government. Ms. Gorelick stated before the committee that at the direction of Attorney General Reno, she took on improving the relationship between law enforcement and intelligence as a "special project" to prepare the Justice Department to confront the emergence of transnational problems with profound implications for national security, such as terrorism. At the time of the hearing, Ms. Gorelick stated she had been working for many months on a number of initiatives to address the inevitable intersection between the activities of intelligence and law enforcement agencies, including the difficult issue of sharing of information between the two.

The Commission has correctly identified as a core challenge to the US developing a preventive counter terrorism strategy the impediments limiting communication between agents conducting intelligence investigations and criminal investigative and prosecution units of the Department of Justice. As the staff report notes, "this separation of intelligence from criminal investigations has come to be known as the 'wall'". The report goes on to note, "the wall requirement came to be interpreted by the Justice Department and the Foreign Intelligence Surveillance Act court as imposing an increasingly stringent barrier to communications between

FBI intelligence agents and criminal prosecutors”.

In her testimony before the Intelligence Committee, Ms. Gorelick describes a deliberate, in-depth process of many months within the Justice Department to dissect this problem and formulate a response. In response, she describes a number of initiatives pursued by the Justice Department, including “an inter-community training plan for prosecutors, law enforcement agents and Intelligence Community personnel that will improve each community’s understanding of the roles, missions and authorities for the other community”. Justice also, it was noted, was developing “new procedures to improve law enforcement’s ability to use foreign intelligence to shape policy and suggest topics for strategic foreign intelligence gathering”.

It is imperative the committee explore with Ms. Gorelick these many initiatives and procedures pursued at her direction and any analysis leading to their formulation. It will certainly advance the work of the Commission to determine if the initiatives permitted law enforcement to receive critical information with any regularity and if the inter-community program and other initiatives were successful in their goals. The Commission must also explore if the Justice Department’s posture promoted enhanced national security by enabling agents on the criminal and intelligence side or if it limited terrorism prevention. If the policy proved to be limiting, the committee must examine upon what grounds the recommendations were made and the extent to which they were balanced against national security considerations.

Commissioner Gorelick has made many important contributions to the fight against terrorists, including advocating additional crimes for terrorism and increased sentences for terrorist activities. Her anti-terrorism activities while at the Justice Department were extensive. As she noted before the committee, these are issues she had “been spending a lot of my time on at the direction of the Attorney General”. Therefore, it is our firm belief that any committee report or recommendations will be incomplete without public testimony by Ms. Gorelick about her activities while serving as Deputy Attorney General. Thank you for your attention, we look forward to the Commission setting a date for the appearance.

Sincerely,

Bill Bond
Sherrill Lett
Ed Burnett
Red Stevens
John Cornyn

Larry Claiborne
Samuel R. Alito
John J. Warner
William H. Pryor
Norm Coleman
Don Nickles